

SOP 50 10(5) – Environmental Frequently Asked Questions

Environmental Investigation Reports

1. Q: What form of historical records may be reviewed by an Environmental Professional as part of the “Records Search with Risk Assessment?” Must fire insurance maps and reverse directories always be utilized in cities where they are available?

A: Examples of historical records include, but are not limited to, aerial photographs, city directories, reverse directories, fire insurance maps, building department records, chain of title documents, land use records, etc. The SBA takes the position that the Environmental Professional is best suited to determine the appropriate historical records to be reviewed based upon the site in question. The choice of historical records to be reviewed on any particular site is at the discretion of the Environmental Professional and this choice may or may not include fire insurance maps and reverse directories.

2. Q: Who decides if property is “high risk” or “low risk” risk on a Records Search with Risk Assessment?

A: An Environmental Professional must make the determination as to whether a property is “high risk” or “Low Risk” (Refer to the definitions of “Environmental Professional” and “Records Search with Risk Assessment” on pages 323 and 325).

3. Q: Can a lender utilize an “in house” Environmental Professional?

A: Yes, if the Environmental Professional meets the definition of an Environmental Professional set forth on page 323 and the Environmental Professional executes the Reliance Letter on page 327 of the SOP.

4. Q: Must lenders and CDC’s present the SBA with all Environmental Investigation Reports pertaining to the property in their possession?

A: Yes. Lenders must share all Environmental Investigation Reports with the SBA.

Approval and Disbursement of loans when there is Contamination or Remediation

1. Q: “Other Factors” - Can PCLP and PLP lenders rely upon “Other Factors” (page 188 and 289) as part of their unilateral authority?

A: No. If PLP lenders or PCLP CDCs are relying upon “other factors” for disbursement in the presence of contamination they must first obtain consent by e-mailing the request to environmentalappeals@sba.gov

2. Q: Environmental insurance – Can lenders rely upon environmental insurance to disburse in the presence of contamination?

A: Environmental insurance can only be utilized as a component of “other factors” which requires submission to the environmental appeals mailbox (see discussion above).

3. Q: When may a lender utilize the environmental appeals process?

A: Lenders and CDCs may appeal environmental decisions rendered by the SBA that they believe are inconsistent with SOP 50 10 (5). Lenders and CDCs should always first attempt to resolve the concerns directly with the SBA attorney or environmental engineer that rendered the decision.

Reliance Letter

1. Q: When does the “Reliance Letter” have to be obtained from an Environmental Professional?

A: A Reliance Letter is required with a Transaction Screen, Phase I and Phase II. It is not required with a Records Search with Risk Assessment.

2. Q: Do you need a Reliance Letter if the Environmental Investigation Report is addressed to the 7(a) Lender or CDC?

A: Yes. The Reliance Letter includes mandatory certifications that must be made by the Environmental Professional such as evidence of insurance, etc.

Gas Station Loans

1. Q: Is a Phase I required for gas stations that are more than five years old?

A: Although a Phase I is not explicitly required for gas stations that are more than 5 years old, this is likely to change in the future based upon recent feedback that the SBA has received from a number of Environmental Professionals. Lenders are advised to consult with their Environmental Professional as to whether a Phase I should be conducted on a particular site.

2. Q: On gas station loans, does the SBA Environmental Indemnification Agreement requirement apply to leases?

A: Yes, in those circumstances where environmental indemnification is required.

3. Q: Is an SBA Environmental Indemnification Agreement always required for gas station loans?

A: No. See page 334 for the three exceptions to the general rule requiring an SBA Environmental Indemnification Agreement.

4. Q: Are there any additional considerations that must be considered when making gas station loans?

A: Yes. Lenders and CDCs should always refer to the franchise section of SOP 50 10 (5) and to SBA Information Notice 7000-173.

Indemnification Agreement

1. Q: Can the SBA Environmental Indemnification Agreement be modified?

A: The SBA Environmental Indemnification Agreement may only be modified as needed for recording purposes, to accommodate necessary signatures, etc. The substantive content of the SBA Environmental Indemnification Agreement must not be modified.

2. Q: In an EPC/OC situation where an SBA Environmental Indemnification Agreement is required, must the operating company also execute the agreement?

A: Yes.

3. Q: Where should a CDC send a fully executed SBA Environmental Indemnification Agreement?

A: CDCs (both PCLP and non-PCLP) must send a copy of the fully executed SBA Environmental Indemnity Agreement to the district counsel where the loan will be closed. This must be done at least two weeks in advance of the due date of the closing package. (Note that the original agreement will be sent by the CDC to the appropriate SBA Servicing Center after funding of the loan).